IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1774 OF 2004

Mrs.Kavita Kapoor of Mumbai
Indian inhabitant, residing
at Flat No.6, 2nd Floor,
New Riviera Co-operative Housing
Society, Marine Drive,
Mumbai - 400 021. ..**Petitioner**

Vs.

1. Union of India
Aaykar Bhavan, New Manne,
Mumbai - 400 020.

2. Rear Admiral M.P.Taneja,
being the Flag Officer C-in-C,
Western Fleet, Indian Navy,
and also the Estate Officer
under the provisions of the
Public Premises (Eviction of
Unauthorised Occupants) Act,1971
having his office at Headquarters,
Maharashtra Naval Area,
C/o.Fleet Mail Office,
Mumbai - 400 001.

3. Military Estate Officer,
Maharashtra & Gujarat Circle,
having his Office at the
Military Estate Office,
Afghan Church, Colaba,
Mumbai - 400 005. ..**Respondents**

Mr.Aspi Chinoy, Senior Advocate with Mr.C.U.Singh, Senior Advocate, Ms.Soma Singh i/b. Vivek Sharma for the Petitioner.

Ms.Dara Zaiwala, Senior Advocate with Y.R.Mishra, Mr.D.A.Dube i/b. Mr.Pankaj Kapoor for the Respondents.

CORAM :- DR.S.RADHAKRISHNAN &
SMT.V.K.TAHILRAMANI,JJ.

DATE : 19TH DECEMBER, 2006

JUDGMENT (PER :- DR.S.RADHAKRISHNAN,J.)

1. By this Petition, the Petitioner is seeking to challenge the show cause notice dated 9th September,2003 and a notice dated 21st January,2004 under Section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act,1971, issued by the Respondents for evicting the Petitioner from Flat No.6, New Riviera Co-operative Housing Society, Marine Drive, Mumbai-400021, registered under the Maharashtra Co-operative Societies Act on 19th May, 1979.

2. The brief facts are that the original landlady Mrs.Rani Ruparaj Laxmi of Samod, who was the original owner of the said Riviera building had let out 28 flats to the Defence Department in the year 1942. It appears that in the year 1942, 2 flats were released to the Landlady and in the year 1962, 2 more flats were released by the Central Government to the Landlady, whereby the Central Government was in possession of 24 Flats and the 4 flats were in possession of the Landlady. In the year 1967, Flat No.22 was allotted to the Petitioner's husband viz. Wg.Cadr.M.K.Kapoor of Indian Air Force. As the Landlady was in arrears of municipal tax, the Income Tax Department had attached the rent of the building in the year 1970. In the year 1972 the Landlady had let out Flat No.6 to the Petitioner. In the year 1975 the Petitioner's husband has expired. In the year

1976, as the Landlady was in default of payment of municipal tax of the said building, hence the building was put up for public auction by the Bombay Municipal Corporation and in the said public auction the occupants of the said building including the Petitioner had purchased the said building collectively and had paid her proportionate share of purchase price for Flat No.6 and 22. Thereafter it appears that the Certificate of Sale dated 27th July,1976 was issued by the Municipal Corporation in favour of the aforesaid purchasers. On 14th November,1977 the Government had published a Notification under the provisions of Section 4(1) of the Land Acquisition Act,1894. In view of the said Notification the Respondents had issued a notice dated 18th February,1978 to all the joint owners of the building regarding their objections for the proposed acquisition. On 22nd July,1980 the Under Secretary to the Government of Maharashtra had addressed a letter to the Military Estate Officer, calling upon him to confirm that acquiring body would not disturb the occupants of 4 flats, who are not Government Officials and that they would be allowed to continue in occupation of the premises even after completion of Acquisition proceedings. Thereafter on 17th November,1980 another Notification was published by the Government under Section 6 of the Land Acquisition Act declaring that the land covered by Notification was required for public purpose. Aggrieved by the

said Notification, a Writ Petition No.74 of 1981 was filed by the Riviera Cooperative Society, which was admitted on 23rd January,1981. Even on 12th March,1981, the Minister of State in the Ministry of Defence addressed a letter to the late Shri.Y.B.Chavan stating that the 4 flats of original tenants including Flat No.6 would not be affected by the acquisition proceedings and the occupants therein would not be disturbed.

3. It appears that in the year 1984 with a view to secure the possession of Flat No.6, the Petitioner had relinquished the possession of Flat No.22 to Indian Navy, as the Petitioner could not occupy 2 flats at the same time. On 26th August,1985, the Society members had filed an affidavit in reply Writ Petition No.74 wherein it was affirmed that the possession of those 4 flats would not be disturbed. Thereafter the Joint Secretary (Navy) of Ministry of Defence also had filed an affidavit admitting that the Military Estate Officer had informed the under Secretary, Government of Maharashtra by letter dated 6th September,1980 that 4 flats were occupied by the people who are not Government officers and they would be allowed to occupy these flats even after completion of acquisition proceedings. On 9th August,1990 the aforesaid Writ Petition No.74 of 1991 came to be dismissed against the Petitioner. Thereafter the Petitioner had filed an Appeal making clear her stand

however the said Appeal came to be dismissed along with Society's Appeal No.990 of 1990. After dismissal of the said Appeal, the Special Leave Petitions were also dismissed before the Hon'ble Supreme Court, however it was made clear that the Society would not be prevented from approaching the Government for permission to continue in the building after acquisition and the same would be a matter entirely within the discretion of the Government. On 14th January,1982 certain Guidelines were issued by the Minister of Urban Development, Government of India. On 30th June,1993, a letter addressed by Minister for Revenue and Culture Affairs, Government of Maharashtra to Respondent No.1 and Collector of Bombay bringing to their notice that Military Estate Officer had agreed in a meeting with the then Defence Minister, that even after the acquisition of the said building by Navy, the occupants of 4 flats would not be disturbed. However, on 17th December,1995 the said Society had made a representation to the Union of India for withdrawal of the acquisition proceedings, but in-vain. On the contrary, Respondent No.1 had issued a Notice dated 15th July,1996 for fixing the time to take posession. Thereafter also on 15th July,1996 the Petitioner had made a representation to Respondent No.2 but there was no any reply. Aggrieved by the Notice dated 15th July,1996 the said Society had filed a Writ Petition No.1457 of 1996 on 19th July,1996 and the Petitioner had filed an Intervener affidavit in

the said Petition on 25th July,1996. However, on 2nd August,1996 the said Petition came to be dismissed.

4. The present Petitioner had also filed a Writ Petition No.1696 of 1996 before this Court, which was disposed of by us by our order dated 14th December,2006, wherein the learned Senior Counsel appearing on behalf of the Respondent-Union of India had categorically stated that the Petitioner was a tenant upto 14th October,2003 and the Petitioner's tenancy with regard to Flat No.6 situated in Riviera Cooperative Society, Marine Drive, Mumbai stood terminated with effect from 15th October,2003 by a notice dated 9th September,2003.

5. Mr.Zaiwala, the learned Senior Counsel appearing on behalf of the Respondents raised two objections in the present Petition, and the first objection is by way of a preliminary objection contending that after termination of tenancy by a letter dated 9th September,2003, the show cause notice dated 21st January,2004 has been issued under Section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act and pointed out that the Petitioner has efficacious alternate remedy by way of a statutory Appeal. The learned Senior Counsel submitted that the Petitioner can raise all the issues before the learned Estate Officer and thereafter a statutory Appeal is provided before the learned Principal Judge of the

Bombay City Civil Court. The learned Senior Counsel further submitted that the Petitioner thereafter can approach this Court by way of a Writ Petition. Therefore, Mr.Zaiwala, the learned Senior Counsel contended that in this case, the Petitioner ought to have availed the alternate efficacious remedy available in law and this Court ought not to have entertained the present Petition.

6. Mr.Zaiwala, the learned Senior Counsel also raised a second objection. He contended that the 2002 Guidelines are applicable only to public sector undertakings and banks and not to Government Departments. Mr.Zaiwala, the learned Senior Counsel also fairly states that the Respondents will not raise any objection before the learned Estate Officer that the learned Estate Officer should not consider the 2002 Guidelines. Mr.Zaiwala fairly states that the Petitioner can raise the objections with regard to the show cause notice, that the same are contrary to the Guidelines, before the learned Estate Officer. He also made it clear that the Respondents will not contend that merely because the Petitioner's tenancy has been terminated on 9th September,2003 and as per Section 2(G) of the Public Premises (Eviction of Unauthorised Occupants) Act, the Petitioner ought to have to be treated as "unauthorised occupants" and as such they should not be allowed to seek recourse to the 2002 Guidelines. To put it in other words,

Mr.Zaiwala made it clear that the Petitioner will be entitled to raise the issue that the said termination of tenancy was clearly contrary to the 2002 Guidelines before the learned Estate Officer, who can decide the same strictly on its own merits, in accordance with law.

7. Mr.Chander Uday Singh, the learned Senior Counsel for the Petitioner could not dispute that if the Petitioner would be able to agitate all the issues before the learned Estate Officer then it cannot be contended that the Petitioner had no alternate efficacious remedy. Mr.Singh, the learned Senior Counsel further contended that the action of the Respondents was totally without jurisdiction. This submission can also be raised before the learned Estate Officer. Having regard to the facts and circumstances of case and also in view of the fact in the present case that the tenancy has been terminated and whereas in the case of **Persis Kothawalla Vs. Life Insurance Corporation of India & Another, 2004(4) Bom.C.R.610**, we had entertained the Petition and did not drive the Petitioner to adopt the alternate remedy, as the tenancy was not terminated in that case.

8. Under the aforesaid facts and circumstances of the case, we are clearly of the view that the Petitioner would be able to agitate all the issues

before the learned Estate Officer especially, when the learned Senior Counsel for the Respondents has made it clear that they will not raise any objection that the learned Estate Officer is not bound by the said 2002 Guidelines. However, Mr.Zaiwala, the learned Senior Counsel made it clear that the Respondents will contend that the said guidelines that do not apply to the Defence Department, which issue, of course will be considered by the learned Estate Officer on its own merits, while deciding the Appeal.

9. Under the aforesaid facts and circumstances of the case, we are not inclined to interfere in the above, exercising our extra ordinary jurisdiction under Article 226 of the Constitution of India. However, we allow the Respondents to communicate the Petitioner indicating the date on which the aforesaid proceedings will be continued before the learned Estate Officer and the learned Estate Officer shall give at least four weeks prior notice before commencing the said inquiry under the Public Premises (Eviction of Unauthorised Occupants) Act. It is also made clear that the learned Estate Officer, while hearing the matter shall take into account 2002 Guidelines and shall also decide whether the same applies to Government Department or not and also decide the matter strictly on its own merits. Needless to mention that thereafter a statutory Appeal is provided under the Public Premises (Eviction of

Unauthorised Occupants) Act before the learned Principal Judge of the Bombay City Civil Court. The present Petition has been filed at the stage of the show cause notice. Hence, we are not inclined to interfere at this stage and the Rule is discharged with the above observations.

10. It is also made clear that all the contentions raised by the Petitioner and the submissions of the Respondents are expressly kept open and the learned Estate Officer to decide the same strictly on its own merits in accordance with law.

(DR.S.RADHAKRISHNAN,J.)

(SMT.V.K.TAHILRAMANI,J.)